

Court of Appeals, Division One
Civil Appeal

1 CA-CV 14-0264

THIENES v. CITY CENTER et al.

Appellate Case Information

Case Filed: 30-Apr-2014
Case Closed:

Dept/Composition

Department B

Hon. Kent E Cattani
Hon. Lawrence F Winthrop
Hon. Peter B Swann

Consolidated with: 1 CA-CV 14-0077

Side 1. BRIAN THIENES, an individual; JOHN BALL and MONICA BALL, husband and wife; THE THOMPSON FAMILY TRUST; JUAN BRACAMONTE and JACQUELINE BRACAMONTE, husband and wife, Plaintiff/Appellee
(Litigant Group) BRIAN THIENES et al.

- Brian Thienes
- John Ball
- Monica Ball
- The Thompson Family Trust
- Juan Bracamonte
- Jacqueline Bracamonte

Attorneys for: Plaintiffs/Appellees

Franklyn D Jeans, Esq. (AZ Bar No. 4657)
Cory L Broadbent, Esq. (AZ Bar No. 24049)
Cassandra H Ayres, Esq. (AZ Bar No. 25937)

Side 2. CITY CENTER EXECUTIVE PLAZA, LLC; INFORMATION SOLUTIONS, INC.; and JERRY and CINDY ALDRIDGE, Defendant/Appellant
(Litigant Group) CITY CENTER EXECUTIVE PLAZA et al.

- City Center Executive Plaza LLC
- Information Solutions Inc
- Jerry Aldridge
- Cindy Aldridge

Attorneys for: Defendants/Appellants

Daniel C Barr, Esq. (AZ Bar No. 10149)
John H Gray, Esq. (AZ Bar No. 28107)
Joshua M Crum, Esq. (AZ Bar No. 27302)

Side 3. THE REFUGE COMMUNITY ASSOCIATION, Defendant/Appellee
(Litigant Group) THE REFUGE COMMUNITY ASSOCIATION

- Refuge Community Association Inc

Attorneys for: Defendant/Appellee Refuge Comm

Penny L Koepke, Esq. (AZ Bar No. 14996)
Nicole Miller, Esq. (AZ Bar No. 23365)
Solomon S Krotzer, Esq. (AZ Bar No. 27985)

CASE STATUS

Nov 23, 2016....Pending in ASC

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MOH S8015CV201001563	Breach of Contract; Breach of Covenant of Good Faith and Fair Dealing [see filing]		Lee Frank Jantzen, Authoring Judge of Order		

DESCENDENT CASE(S)

ASC CV-16-0281-PR

PENDING MATTER

General Motion

Filed: 6-Oct-2016

Thienes Appellees Application for Award of Attorneys Fees and Cost; Certificate of Service (Appellee)

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THIENES v. CITY CENTER et al.

CASE DECISION

22-Sep-2016 MEMORANDUM DECISION

Lawrence Winthrop.....Author
Kent Cattani.....Concur
Peter Swann.....Concur

Filed: **22-Sep-2016**

Mandate:

Decision Disposition

Affirmed in Part
Vacated in Part
Remanded

DECISION APPLIES TO THE FOLLOWING OTHER CASE(S)

1 CA-CV 14-0077

THIENES et al. v. CITY CENTER et al.

91 PROCEEDING ENTRIES

1. 30-Apr-2014 FILED: Appellants' Motion to Consolidate Appeal with Pending Appeal No. 1CA-CV 14-0077; Notice of Appeal; Certificate of Service (Appellant)
2. 6-May-2014 RECEIPT No.: 2014-00528 ; \$280.00, Authorization: # 25025716340, Applied to: CITY CENTER EXECUTIVE PLAZA et al. - Class A Filing Fee (\$280.00) Paid for: Perkins Coie LLP - By Integrated Resource Systems IN
3. 14-May-2014 FILED: Appellees' Opposition to Motion to Consolidate Appeal with Pending Appeal No. 1 CA-CV-14-0077; Certificate of Service (Appellee)
4. 16-May-2014 FILED: Appellants' Reply in Support of Motion to Consolidate Appeal with Pending Appeal No. 1-CA-CV 14-0077; Certificate of Service; Exhibits 1 and 2 (Appellant)
5. 19-May-2014 FILED: Appellee Refuge Community Association's Response to Appellants' Motion to Consolidate; Certificate of Service (Appellee)
6. 19-May-2014 RECEIPT No.: 2014-00601 ; \$140.00, Authorization: Ref1#39011321355, Applied to: BRIAN THIENES et al. - Appellee's Filing Fee (\$140.00) Paid for: Beus Gilbert PLLC - By Intresys Inc
7. 20-May-2014 FILED: Appellants' Reply to the Refuge Community Association, Inc.'s Response to Appellants' Motion to Consolidate Appeal; Certificate of Service; Exhibit 1 (Appellant)
8. 21-May-2014 RECEIPT No.: 2014-00621 ; \$140.00, Authorization: #40012357147, Applied to: THE REFUGE COMMUNITY ASSOCIATION - Class B Filing Fee (\$140.00) Paid for: Ekmark & Ekmark LLC - By Integrated Resource Systems IN
9. 11-Jul-2014 FILED: e-Record on Appeal:
Instruments/Minute Entries
e-Reporter's Transcripts 9/15/10, 11/15/10, 3/21/13, 4/15/13, 4/16/13, 4/17/13, 4/18/13, 4/19/13, 4/22/13, 4/23/13, 4/24/13, 4/25/13, 4/26/13, 4/29/13, 4/30/13, 5/1/13, 5/2/13, 5/3/13, 5/6/13, 11/13/13; e-Exhibit: List and # E2 E5 E7 E12 320 E32 E46 E91 E92 E120 E121 E122 E130 E135 E139 E151 E153 E158 E232 3238 E239 E240 E246 E250 E266 E299 E301 E323 E328 E329 E330 E336 E337 E340 E341E342 E43 E45 E346 E347 E352 E353 E368 E384 E385
10. 11-Jul-2014 FILED: Index of Record, Notice of Appeal filed in Maricopa County Superior Court on 6/17/14
Bond Filed in Superior Court: None
Docketing Statement Filed in Superior Court: 4/28/14
11. 11-Jul-2014 FILED: Reporters Transcript (09/15/10 [Steven L Garwood])
12. 11-Jul-2014 FILED: Reporters Transcript (03/21/13 [Theresa Salsberry])
13. 11-Jul-2014 FILED: Reporters Transcript (11/15/10 [Steven L Garwood])
14. 11-Jul-2014 FILED: Reporters Transcript (04/15/13 [Theresa Salsberry])
15. 11-Jul-2014 FILED: Reporters Transcript (04/16/13 [Theresa Salsberry])
16. 11-Jul-2014 FILED: Reporters Transcript (04/17/13 [Theresa Salsberry])
17. 11-Jul-2014 FILED: Reporters Transcript (04/18/13 [Theresa Salsberry])
18. 11-Jul-2014 FILED: Reporters Transcript (04/19/13 [Theresa Salsberry])
19. 11-Jul-2014 FILED: Reporters Transcript (04/22/13 [Theresa Salsberry])
20. 11-Jul-2014 FILED: Reporters Transcript (04/23/13 [Theresa Salsberry])

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21.	11-Jul-2014	FILED: Reporters Transcript (04/24/13 [Theresa Salsberry])
22.	11-Jul-2014	FILED: Reporters Transcript (04/25/13 [Theresa Salsberry])
23.	11-Jul-2014	FILED: Reporters Transcript (04/26/13 [Theresa Salsberry])
24.	11-Jul-2014	FILED: Reporters Transcript (04/29/13 [Theresa Salsberry])
25.	11-Jul-2014	FILED: Reporters Transcript (04/30/13 [Theresa Salsberry])
26.	11-Jul-2014	FILED: Reporters Transcript (05/01/13 [Theresa Salsberry])
27.	11-Jul-2014	FILED: Reporters Transcript (05/02/13 [Theresa Salsberry])
28.	11-Jul-2014	FILED: Reporters Transcript (05/03/13 [Theresa Salsberry])
29.	11-Jul-2014	FILED: Reporters Transcript (05/06/13 [Theresa Salsberry])
30.	11-Jul-2014	FILED: Reporters Transcript (11/13/13 [Theresa Salsberry])
31.	15-Jul-2014	ORDERED: Per Eaton Fruit, appeal stay to/incl. 8/14/14. FURTHER ORDERED: appellant shall file a notice with this court within ten days after the superior court issues a ruling on the application. FURTHER ORDERED: if the appeal has not been reinstated by the filing of a signed order, the appeal shall be automatically reinstated by 8/15/14. FURTHER ORDERED: deferring a ruling on appellants' Motion to Consolidate Appeal with Pending Appeal No. 1 CA-CV 14-0077 until after the superior court enters a signed order and the appeal is reinstated. Melina Brill ProTem Judge - Author
32.	12-Aug-2014	FILED: Notice of Ruling on Application for Signed Order; Certificate of Service; Notice-Order-Ruling (Appellant)
33.	18-Aug-2014	ORDERED: granting appellants' motion and consolidating case 1 CA-CV 14-0077 with 1 CA-CV 14-0264. Case no. 1 CA-CV 14-0077 is designated the primary number. FURTHER ORDERED: opening brief for the issues in appeal 1 CA-CV 14-0264 shall be filed on or before 9/19/14. Hon Margaret H Downie - Author
34.	20-Aug-2014	FILED: Notice/Order/Ruling (Mohave County Superior Court)
35.	19-Sep-2014	FILED: Appellants' Opening Brief; Certificate of Compliance; Certificate of Service; Exhibit A (Appellant City Center)
36.	10-Oct-2014	FILED: Procedural Motion: Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion; Certificate of Service; Declaration of Daniel C. Barr in Support of Appellants' Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion; Proposed Order Granting Appellants' Procedural Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion (Appellant)
37.	13-Oct-2014	FILED: Statement of Limited Consent to Motion Regarding Procedural Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion; Certificate of Service (Appellant City Center)
38.	29-Oct-2014	FILED: Thienes Appellees' Answering Brief on Fee Issue; Certificate of Compliance; Certificate of Service (Appellee Thienes)
39.	29-Oct-2014	FILED: Answering Brief of Appellee The Refuge Community Association, Inc.; Certificate of Compliance; Certificate of Service (Appellee Refuge Community)
40.	29-Oct-2014	FILED: Appendix to Appellee's Answering Brief (Appellee Refuge)
41.	30-Oct-2014	FILED: Motion for Leave of Court to File Amicus Brief (LHCPED); Certificate of Service (Amicus Curiae)
42.	3-Nov-2014	FILED: Thienes Appellees' Response to Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion; Certificate of Service (Appellee)
43.	4-Nov-2014	FILED: Reply to Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion; Certificate of Service (Appellant)
44.	12-Nov-2014	FILED: Procedural Motion: Motion For Extension of Length of Appellants' Reply Brief; Certificate of Service; Declaration of John H. Gray; Proposed Order (Appellant)
45.	12-Nov-2014	ORDERED: staying the appeal to and including 12/12/14, and revisiting jurisdiction in the Superior Court of Mohave County for the purpose of permitting that court to consider the pending Rule 60(c) motion. FURTHER ORDERED: on 12/15/14, this appeal shall be automatically reinstated, unless before that date appellants file a notice reinstating the appeal, a motion to dismiss the appeal, or a motion to continue the stay of the appeal. FURTHER ORDERED: appellant shall file a notice with this court within ten days after the superior court rules on the motion. FURTHER ORDERED: this order does not affect the deadline for filing the reply brief for the issues in appeal 1 CA-CV 14-0264. Melina Brill ProTem Judge - Author

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91 PROCEEDING ENTRIES

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| 46. | 18-Nov-2014 | FILED: Amicus Curiae Brief (Amicus Curiae NAR) |
| 47. | 18-Nov-2014 | FILED: Motion for Leave to File Amicus Curiae Brief; Certificate of Service Re: Motion for Leave to File Amicus Curiae Brief (Amicus Curiae National Association of Realtors (NAR)) |
| 48. | 20-Nov-2014 | FILED: Appellants' Notice of No Reply to Motion for Extension of Length of Reply Brief; Certificate of Service (Appellant) |
| 49. | 20-Nov-2014 | FILED: Appellee The Refuge Community Association, INC.'s Joinder in Thienes Appellees' Response to Appellants' Motion for Extension of Length of Appellant's Reply Brief; Certificate of Service (Appellee) |
| 50. | 20-Nov-2014 | FILED: Thienes Appellees' Response to Appellants' Motion for Extension of Length of Appellants' Reply Brief; Certificate of Service (Appellee) |
| 51. | 24-Nov-2014 | FILED: Appellants' Consolidated Reply Brief; Certificate of Compliance; Certificate of Service; Exhibit A (Appellant) |
| 52. | 25-Nov-2014 | ORDERED: granting appellants' motion and allowing appellants to file a consolidated reply brief with up to 14,000 words. FURTHER ORDERED: granting the motion and accepting for filing the brief of the National Association and Realtors and the Arizona Association of Realtors lodged on 11/18/14. FURTHER ORDERED: any party desiring to respond to the amicus curiae brief shall file a response within twenty days of the date of this order. Hon Diane M Johnsen - Author |
| 53. | 26-Nov-2014 | FILED: Notice of Withdrawal and Disassociation from Firm; Certificate of Service (Appellant) |
| 54. | 8-Dec-2014 | FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days |
| 55. | 15-Dec-2014 | FILED: Motion to Continue Stay of Appeal and to Re-Vest Jurisdiction in the Superior Court; Certificate of Service (Appellant) |
| 56. | 15-Dec-2014 | FILED: Thienes Appellees' Response to Amicus Brief; Certificate of Compliance; Certificate of Service (Appellee) |
| 57. | 17-Dec-2014 | FILED: Notice of Superior Court Order and Request to Reinstate Appeal; Certificate of Service; Exhibit A; Exhibit B (Appellant) |
| 58. | 17-Dec-2014 | ORDERED: Motion to Continue Stay of Appeal and to Re-Vest Jurisdiction in the Superior Court (Appellant) = GRANTED/continuing stay to/including 1/15/15. Appeal will be reinstated on 1/16/15, unless appellants file request to continue stay. Melina Brill ProTem Judge - Author |
| 59. | 19-Dec-2014 | ORDERED: reinstating this appeal. FURTHER ORDERED: clerk shall schedule appeal for consideration on merits. Melina Brill ProTem Judge - Author |
| 60. | 29-Jan-2015 | CLNDR: MONTHLY COURT CASE CALENDAR, Department B, 3-3-15, 11:00 am, COURTROOM 2. |
| 61. | 4-Feb-2015 | FILED: Notice of Oral Argument |
| 62. | 5-Feb-2015 | FILED: Motion for Procedural Order Re: Continuance of Scheduled Oral Argument; Certificate of Service (Appellee) |
| 63. | 5-Feb-2015 | FILED: Appellant's Response to Motion for Procedural Order Re: Continuance of Scheduled Oral Argument; Certificate of Service (Appellant) |
| 64. | 9-Feb-2015 | FILED: Return Receipt for Notice of Oral Argument, signed by Franklyn D Jeans on 2/5/15 (Appellees Thienes, et al) |
| 65. | 9-Feb-2015 | FILED: Reply in Support of Appellees' Motion for Procedural Order Re: Continuance of Scheduled Oral Argument; Certificate of Service (Appellee) |
| 66. | 10-Feb-2015 | ORDERED: OA currently scheduled for 3/3/15 is vacated. FURTHER ORDERED: OA shall be rescheduled for 4/21/15 @ 10:15 am before Dept B. FURTHER ORDERED: Each side have 20 minutes to present OA. Hon Kent E Cattani Judge - Author |
| 67. | 11-Feb-2015 | FILED: Return Receipt for Notice of Oral Argument, signed by Penny L Koepke on 2/4/15; Certificate of Service (Appellee The Refuge) |
| 68. | 26-Feb-2015 | FILED: Appellants' Motion for Clarification Regarding Oral Argument Presentation Time; Certificate of Service (Appellant) |
| 69. | 2-Mar-2015 | ORDERED: confirming total time for argument consolidated matter will be 40 minutes, w/ 20 minutes each for appellant/appellees. Hon Kent E Cattani Judge - Author |
| 70. | 10-Mar-2015 | FILED: Notice of Oral Argument |
| 71. | 20-Apr-2015 | ORDERED: (on its own motion, vacates OA set on 4/21/15 @ 10:15 am) Setting OA on 5/12/15 @ 11:15 am before Dept. B. |

Court of Appeals, Division One**Civil Appeal****1 CA-CV 14-0264****THIENES v. CITY CENTER et al.****91 PROCEEDING ENTRIES**

72.	21-Apr-2015	FILED: Return Receipt for Notice of Oral Argument, signed by Penny Koepke on 4/20/15.; Certificate of Service (Appellee Refuge Com.)
73.	21-Apr-2015	FILED: Return Receipt for Notice of Oral Argument, signed by Franklyn D Jeans on 4/20/15.; Certificate of Service (Appellees Thienes)
74.	12-May-2015	FILED: Sign-in Sheet/Case is Under Advisement (Dept B)
75.	6-Sep-2016	FILED: Courtesy Copy – Minute Entry filed 09/02/2016 in Mohave County Superior Court re: The Refuge Community Association's 08/31/2016 Supplement to Application for Order to Show Cause and Request for Emergency Telephonic Hearing, including the attached Affidavit and Exhibits
76.	22-Sep-2016	MEMORANDUM DECISION (Affirmed in Part, Vacated in Part, Remanded) Hon Lawrence F Winthrop - Author; Hon Kent E Cattani Judge - Concur; Hon Peter B Swann - Concur
77.	22-Sep-2016	FILED: Memorandum Decision Distribution List
78.	6-Oct-2016	FILED: Thienes Appellees Application for Award of Attorneys Fees and Cost; Certificate of Service (Appellee)
79.	6-Oct-2016	FILED: Appendix 1 to Application for Fees (Appellee)
80.	6-Oct-2016	FILED: Application for Attorneys' Fees and Taxable Costs of Appellee The Refuge Community Association, Inc.; Certificate of Service; Affidavit In Support of Application for Attorneys' Fees and Taxable Costs of Appellee/Defendant/Counterclaimant The Refuge Community Association, Inc. (Appellee)
81.	6-Oct-2016	FILED: Statement of Costs For Appellee The Refuge Community Association, Inc.; Certificate of Service (Appellee)
82.	7-Oct-2016	FILED: Motion for Clarification and Reconsideration (with Appendix); Certificate of Compliance; Certificate of Service (Appellant)
83.	26-Oct-2016	FILED: Appellants' Opposition to Refuge Community Association's Application for Attorneys' Fees and Costs; Certificate of Service (Appellant)
84.	26-Oct-2016	FILED: Appellants' Opposition to Thienes Appellees' Application for Attorneys' Fees and Costs; Certificate of Service re: Appellants' Opposition to Thienes Appellees' Application for Attorneys Fees and Costs (Appellant)
85.	28-Oct-2016	FILED: Courtesy Copy - Minute Entry filed in Mohave County Superior Court re: Order to Show Cause Hearing
86.	31-Oct-2016	FILED: Motion for Leave to File Supplemental Brief to Motion for Clarification and Reconsideration; Certificate of Service re Motion for Leave to File Supplemental Exhibit; Exhibit 1 (Appellant)
87.	7-Nov-2016	ORDERED: Motion for Clarification and Reconsideration (with Appendix) (Appellant) = DENIED. FURTHER ORDERED: Motion for Leave to File Supplemental Brief to Motion for Clarification and Reconsideration (Appellant) = DENIED. Hon Lawrence F Winthrop - Author
88.	7-Nov-2016	ORDERED: granting the Application for Attorneys' Fees and Taxable Costs in part and awarding fees of \$40,000.00 and costs of \$3,569.25 to Defendant/Appellee The Refuge Community Association and against Appellants. Hon Lawrence F Winthrop - Author
89.	7-Nov-2016	FILED: Thienes Appellees' Reply in Support of Their Application for Award of Attorneys' Fees and Costs; Certificate of Service (Appellee)
90.	23-Nov-2016	FILED: Email Notice from ASC re: Petition for Review filed 11/22/16; request for partial record
91.	25-Nov-2016	FILED: Letter forwarding partial record to Arizona Supreme Court